SUPREME COURT OF THE UNITED STATES.

No. 147.—October Term, 1920.

The United States of America, Plaintiff in Error, *vs.* William E. Rogers et al.	In Error to the United States Circuit Court of Appeals for the Eighth Circuit.

[February 28, 1921.]

Mr. Justice Day delivered the opinion of the Court.

The United States brought an action January 18, 1915, in the District Court of the United States for New Mexico, to condemn lands of the defendants in error for reclamation purposes. 32 Stat. 388. Condemnation proceedings to acquire real estate for Government uses and public purposes under judicial process are regulated by the Act of August 1, 1888. 25 Stat. 357.

Section 2 of the Act provides that the practice, pleadings, forms and modes of proceedings in causes, arising under the provisions of the act, shall conform, as near as may be, to the practice, pleadings, forms and proceedings existing at the time in like causes in the courts of record in the State within which such circuit or district courts are held.

The petition averred the necessity of appropriating the lands in question; that the Secretary of the Interior had determined to acquire the defendants' real estate; that at the date of the completion of the work lands of the defendants were flooded, and thereby appropriated by the United States under the authority of the acts of Congress; that the owners received no compensation; that necessary funds were available to pay any damages which might be awarded defendants. The petition prayed that the court appoint Commissioners to assess the damage which the owners had sustained in consequence of the taking and appropriation of their lands, and that upon payment of the amount assessed the lands

be decreed to be the property of the United States from the date of the appropriation thereof.

The award of the Commissioners was filed February 3, 1917, and an order was entered July 27, 1917, directing that the sums awarded be deposited, and distributed for the benefit of the owners. Subsequently the owners made a motion for a supplemental order requiring the United States to deposit sums equal to 6% interest on the awards calculated from April 19, 1912, the time when the lands were taken by flooding the same. The court made an order requiring the deposit of the additional sum, to which order the United States excepted, and prosecuted a writ of error from the Circuit Court of Appeals of the Eighth Circuit, where the judgment of the District Court was affirmed. 257 Fed. 397.

It appears that the allowance of interest was from the time of the actual taking of the land to the time deposit was made in payment for the same.

The questions upon which the case was taken to the Circuit Court of Appeals appear from the assignments of error, and are: (1) That the District Court erred in awarding interest against the United States from April 12, 1912, to date of deposit of the awards in court, for the reason that interest cannot properly be allowed in a condemnation case against the United States for any period prior to date of final judgment; (2) that the District Court erred in awarding interest against the United States from April 19, 1912, to date of deposit of awards in court, for the reason that interest cannot properly be allowed in a condemnation case against the United States for any period prior to date of the order of the court placing the United States in possession of the lands condemned; (3) that the District Court erred in awarding interest at the rate of six percentum per annum against the United States from April 19, 1912, to date of deposit of awards in court, for the reason that there is no authority of law for allowing interest at said rate on judgments against the United States.

As we are reviewing the judgment of the Circuit Court of Appeals, the assignments of error in that court are the ones open here, and it is evident from what we have said that the question in substance come to this: Was there error in awarding the owners

interest on the value of their lands appropriated from the time of actual taking of the same until compensation was made?

It is unquestionably true that the United States upon claims made against it, cannot in the absence of a statute to that end, be subjected to the payment of interest. *Angarica* v. *Bayard*, 127 U. S. 251, 260; *United States* v. *North Carolina*, 136 U. S. 211, 216, cited and approved in *National Volunteer Home* v. *Parrish*, 229 U. S. 494, 496. In the present case the landowners did not sue upon a claim against the Government, as was the fact in *United States* v. *North American Transportation & Trading Co.*, 253 U. S. 330. The Government was seeking for purposes authorized by statute to appropriate the lands, and it had actually taken them, and had deprived the owners of all beneficial use thereof from the date from which the allowance of interest ran.

Having taken the lands of the defendants in error, it was the duty of the Government to make just compensation as of the time when the owners were deprived of their property. *Monongahela Water Co.* v. *United States*, 148 U. S. 312, 341.

In fixing the compensation the District Court, and the Circuit Court of Appeals in affirming the judgment, followed the New Mexico statute fixing the rate of interest at 6%. This was in conformity with a former ruling of the Circuit Court of Appeals applying the Statutes of Minnesota to lands appropriated in that State. *United States* v. *Sargent*, 162 Fed. 81.

The Government urges that the Conformity Act of August 1, 1888, does not require the United States Government to be bound by the rule of the state statute in the allowance of interest. This may be true, but we agree with the courts below that the allowance of just compensation by giving interest from the time of taking until payment is a convenient and fair method of ascertaining the sum to which the owner of the land is entitled. The fact that the rule is in harmony with the policy of the State where the lands are situated does not militate against but makes for the justice and propriety of its adoption. *United States* v. *Sargent*, *supra*.

We find no error in the judgment of the Circuit Court of Appeals, and the same is

Affirmed.